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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.U.S.A.P. No.14 of 2006
Date of decision:4.12.2006

Commissioner of Customs, Custom House, the Mall Amritsar

...Petitioner

Versus

M/S Jyoti Industries, 20-C, Focal Point, Dhandri Kalan,

Ludhiana

.....Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.M.S.Guglani, Central Government Counsel for the revenue

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JUDGMENT

This appeal has been preferred under Section 130(1)of the Customs Act, 1962 (for short "the Act") by the revenue against the order dated 28.6.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi (for short "the Tribunal) proposing the following substantial questions of law:-

"a) Whether CESTAT is justified in ignoring the fact that party availed the benefit of exemption notification No.34/88-Cus by misrepresentation/misstating goods, involving suppression of the facts, coupled with the findings of the Commissioner that imported goods were not eligible for benefit of Notfn. Ibid, as such can respondent be absolved of the liability as per the provisions of the Section 28 of the Customs Act?

b) Whether after taking into consideration, the facts and circumstances as stated above, said order of the

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Commissioner of Customs is legal and proper in so far as he has not confiscated the goods, imported vide Bill of Entry No.82 dated 26.5.94 even after holding these liable for confiscation under Section 111 (d) and (m) and that these were not eligible for benefit under exemption Notification No.34/88-Cus, but still not levied fine and penalty under Section 125 and 112(a) of the Customs Act, respectively?

c) Whether CESTAT order, upholding the Commissioner's order, which suffered from inherent contradictions stated above, is justified and legal?

d) Whether CESTAT is justified in not treating the act of the misdeclaration of description of the imported goods as willful misstatement of facts under the ambit of proviso to Section 28 of the Customs Act, for invoking extended period of limitation?"

The assessee was issued two cause cause notices alleging that he had wrongly claimed the benefit of notification No.34/88 in respect of BE No.243 dated 19.9.1994. After considering the reply, the demand of duty was confirmed against which the assessee preferred an appeal to the Tribunal.

Another show cause notice dated 22.8.1995 had also been issued to the assessee alleging misdeclaration of description of goods in respect of BE No.82 dated 26.5.1994. After considering the reply, the Commissioner of Customs vide his order dated 25.11.1997 issued on 18.1.1998 dropped the proceedings, against which revenue preferred an appeal before the Tribunal.

The appeals of the revenue as well as assessee were disposed of by separate orders. On 4.1.1999, appeal of the assessee was disposed of as infructuous by noticing the statement of the counsel for the assessee that assessee had paid the determined amount in terms of the Kar Vivadh Samadhan Scheme (for short "the KVSS") under Section 89 of the Finance (No.2) Act, 1998.

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The appeal of the revenue was dismissed as infructuous.

The revenue filed Customs Act Case No.51 of 2002 in this Court and pointed out that the subject matter of the appeal was not covered by the payment made by the assessee under the KVSS. This plea was upheld by this Court and it was observed:-

> "It is, therefore, clear that the declaration filed by the assessee under the KVSS pertained to the duty of Rs.12,51,783/- only demanded in respect of BE No.243 dated 19.9.1994. Had the declaration pertaining to both the bills, the disputed demand would have been shown at Rs.25,43,011/- (Rs.12,51,783/- + Rs.12,01,228/-).
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> It is, thus, clear that the declaration pertained only to BE No.243 dated 19.09.1994 whereby duty of Rs.12,51,783/- was demanded. Even otherwise, as per the original KVSS, there was no provision for making a declaration in respect of the amount disputed in the departmental appeal. It was only after the Delhi High Court vide its judgment dated 17.11.1998 had struck down the proviso to Clause 92 that the Board had issued a press release dated 26.11.1998 extending the benefit of the KVSS to the disputes raised by the department before the various appellate authorities. Thus, the declaration filed by the assessee on 11.09.l998 could not possible have pertained to the departmental appeal. It is true that in column No.2 of para 5 of the declaration form, a reference has been given to show cause notices in respect of both the bills. However, from the other columns, as discussed above, it is clear that the declaration pertained only to levy of duty of Rs.12,51,783/- in respect of BE No.243 dated 19.09.1994."

The matter was remanded to the Tribunal for fresh decision.

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The Tribunal examined the matter on merits and dismissed the appeal of the revenue with the following observations:-

> "We have seen the photocopy of the Bill of Entry No.82 dated 26.5.94, which is in dispute and found that the Assessing Officer has himself assessed the goods under heading 9017.30 by changing the classification adopted by the importer. The examination report of the Customs Officer as recorded on Bill of Entry clearly show that they had found the goods as per description in Bill of Entry and invoice. On examination, when the officers have not pointed out that the goods are to be classified not as "universal measuring instrument" but as "micrometer", then it could only be said a mistake on the part of the Customs Officers and it cannot lead us to conclusion that there has been suppression on the part of the importer (respondent).
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> We find that the assessment was done by the Customs Officers. The goods were also examined by the Customs Officers and they have found that goods as per description given in the invoice. Therefore, if there has been mistake on the part of Customs Officer in proper assessment of the goods, the respondents cannot be held liable for any suppression of facts as they have neither colluded or suppressed the facts. Therefore, the findings of the commissioner are correct and based on evidence on record. We, therefore, find no reason to interfere with the order of the Commissioner in dropping the demand for imports made under Bill of Entry No.82 dated 26.5.94. The appeal of Revenue is accordingly rejected."

We have heard learned counsel for the revenue and perused the record.

The Tribunal has given cogent reasons for holding that there was no misrepresentation or suppression of facts, so as to justify

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invocation of extended period of limitation. The said finding has not shown in any manner to be perverse or unreasonable.

In view of the above, we are of the view that substantial questions of law sought to be raised by the appellant do not arise from the findings recorded by the Tribunal.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

December 04,2006 **(Rajesh Bindal)**
Pka **Judge**